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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NOS. 3734 of 1994

Maharashtra Shikshan Prasarak Mandal
a Public Charitable Trust

2. Sau Indumati Jagannath Mahajan
Managing Trustee,
Maharashtra Shikshan Prasarak Mandal
office at "Mahajan Building"
Shiv Mandir Road, C-321 Ramnagar,
Dombivali(E), Dist. Thane. ...Petitioners

V/s.

1. Shri Kashinath Bhanoji Tayade

2. The Deputy Director of Vocational
Education and Training.

3. The State of Maharashtra ...Respondents

ALONGWITH
WRIT PETITION NO. 3735 OF 1994

Maharashtra Shikshan Prasarak Mandal
a Public Charitable Trust

2. Sau Indumati Jagannath Mahajan
Managing Trustee,
Maharashtra Shikshan Prasarak Mandal
office at "Mahajan Building"
Shiv Mandir Road, C-321 Ramnagar,
Dombivali(E), Dist. Thane. ...Petitioners

V/s.

1. Sau Shubhada Avinash Araokar

2. The Deputy Director of Vocational
Education and Training.

3. The State of Maharashtra ...Respondents

ALONGWITH

WRIT PETITION NO. 3736 OF 1994

Maharashtra Shikshan Prasarak Mandal
a Public Charitable Trust

2. Sau Indumati Jagannath Mahajan
Managing Trustee,
Maharashtra Shikshan Prasarak Mandal
office at "Mahajan Building"
Shiv Mandir Road, C-321 Ramnagar,
Dombivali(E), Dist. Thane. ...Petitioners

V/s.

1. Sau Nayana Umesh Muley,

2. The Deputy Director of Vocational
Education and Training.

3. The State of Maharashtra ...Respondents

ALONGWITH

WRIT PETITION NO. 3737 OF 1994

Maharashtra Shikshan Prasarak Mandal
a Public Charitable Trust

2. Sau Indumati Jagannath Mahajan
Managing Trustee,
Maharashtra Shikshan Prasarak Mandal
office at "Mahajan Building"
Shiv Mandir Road, C-321 Ramnagar,
Dombivali(E), Dist. Thane. ...Petitioners

V/s.

1. Shri Hukumchand Zopa Patil

2. The Deputy Director of Vocational
Education and Training.

3. The State of Maharashtra ...Respondents

Mr.S.V.Palsuledesai, Advocate for Petitioner in all petitions
Mr.G.S.Hegde, Advocate for Respondent No.1 in WP No. 3734/94, 3736/94, 3737/94.
Mr. Dilip Bodake, Advocate for Respondent No.1 in WP No.3735/94.
Mr.S.K.Chinchalikar, AGP for Respondent Nos. 2 & 3 in all petitions.

CORAM : B.H.MARLAPALLE,J.
DATED : 7th & 10th December, 2007

ORAL JUDGEMENT

Appeal No. 8/1994 filed under Section 9 of the MEPS Act, 1977 by 4 different employees/teachers came to be decided by the Judgement and order dated 26-7-1994 and the same had been impugned in these 4 petitions.

Hence, the petitions are decided by a common Judgement.

2. The Petitioner No.1 is a Public Trust registered under the provisions of Bombay Public Trust Act, 1950 with registration no.E-219 Thane dated 13-5-1961 and it was formed for the purpose of imparting education. Petitioner No.2 was the Managing Trustee of the Petitioner No. 1 at the relevant time. The Petitioner No. 1 was running a primary school known as "Maharashtra Vidyalaya" Secondary School known as "Dhanaji Nana Chaudhari Multi purpose High School and junior college. In the year 1991-92 the Petitioners started the Centrally sponsored plus 2 stage Vocational Education Scheme (VES) under the New Education Policy and the qualifications for the teachers for such vocational courses came to be approved by the Government of Maharashtra vide its letter dated 30-11-1991 for conducting Vocational Courses 100% grant for payment of salary of the employees etc. is reimbursed by the

Government. The petitioners released an advertisement in the local newspaper on or about 14-5-1991 for the appointment of teaching staff like lecturers, instructors and technicians etc. The Respondent No.2 is a Deputy Director of Vocational Education and Training and is the representative of Respondent No.3 State of Maharashtra with supervisory powers for the implementation of VES. In response to the advertisement, number of applications were received and consequently, Appellant No.1 Mrs. Shubhada A.Aravkar came to be appointed as an instructor vide the appointment letter dated 10-7-1991 and purely on temporary basis for the academic year 1991-92. Similarly, appellant No.2 Mrs. Nayana Muley came to be appointed on 19-8-1991 on temporary basis for the academic year 1991-92, appellant no. 3 Shri Kashinath Tayade came to be appointed on 8-7-1992 and appellant no.4 Hukumchand Patil was appointed on 16-7-1991 but on temporary basis for the academic year 1991-92. Thus, 3 of the 4 appellants were appointed in the year 1991-92 when admissions to the XIth standard were made. In the next academic year failures were retained in the XIth Standard with the new entrants and those who had passed, came to be promoted in XIIth standard and, therefore, in the said year both the divisions of the Vocational Courses started. Consequently, the appellant no. 3 was

an additional faculty member and the appellant no. 1, 2 & 4 were issued fresh appointment orders on probation for two years alongwith the appellant no.3.

3. Appellants Nos. 1,2 & 4 were issued letters of appointment on probation dated 20-6-1992 wherein the appellant no. 3 was issued such order dated 8-7-1992 as noted earlier. In normal course appellant no. 1,2 and 4 would have completed probation period on 19-6-1994 and the appellant no.3 would have completed on 7-7-1994 but that did not happen. It appears that in the academic year 1993-94 the admissions to the XIth standard were not upto the required strength as set out in the Government Guidelines for being continued to be an aided educational school. The management reassessed the situation sometimes in December 1993 and it realised that there was hardly any scope to continue both the classes in the academic year 1994-95 and hence, on 27-1-1994 all the appellants were issued notices informing that in the year 1994-95 there would not be any admissions in the XIIth standard and in the current academic year i.e. 1993-94, XIth standard was discontinued.

4. Aggrieved by this communication dated 27-1-1994, the appellants approached the School Tribunal and filed

Appeal No. 8/1994. By the Judgement and order dated 26-7-1994, the appeal came to be allowed by the School Tribunal and the petitioners were directed to follow the provisions of Rule 26(2)(ii), 26(2)(iii) of the MEPS Act and reinstate the appellants on their original posts till they were absorbed by the Deputy Director of Vocational Guidance. The management was further directed to give salary attached to that post from June 1994 till they would be absorbed by the Dy. Director of Vocational Guidance. The said Judgement and order is under challenge in this petition under Article 227 of the Constitution.

5. While granting rule, status-quo was directed to be continued in the instant petition and consequently the appellant teachers were not reinstated.

6. The Tribunal held that under Section 5(2) of the Act, the appellants were deemed to have been confirmed. They were terminated from service by the notice dated 27-1-1994 and the said termination was not as per Section 5(3) of the Act. It further held that the benefit of Rule 26(1)(ii) was required to be given to the Petitioners and they could not have been terminated from service. As per the Tribunal even if the courses were closed and there was no scope to restart XIth and

XIIth standard by the Petitioners, the appellants were required to be continued on the rolls and they were entitled to receive their salary till they are absorbed by the Dy. Director of Vocational Guidance as per the Scheme of 26(1)(ii) of the MEPS Rules. In short the Tribunal was satisfied that newly started courses of XIIth standard were closed in the year 1993-94.

7. Mr. Palsuledesai, the Learned Counsel for the Petitioners referred to the contents of the appointment orders issued in the first academic year i.e. 1991-92 and the subsequent appointment orders issued on probation and submitted that when the impugned notice was issued on 27-1-1994, none of the appellants had completed the probation period. The notice was a bonafide exercise of informing the appellants in time that they would not be continued in service in the impending academic year i.e. 1994-95 and in any case the notice dated 27-1-1994 was not on account of unsatisfactory performance of appellant teachers. As per the Learned Counsel for the Petitioner, the Tribunal was in gross error in holding that all the appellants have attained the status of deemed permanency within the meaning of Section 5(2) of the Act and in holding that appellants were required to be given the protection of Rule 26(1)(ii) of the MEPS Rules.

8. Mr. Hegde and Mr.Bodake, the Learned Counsel appearing for the appellants on the other hand have supported the impugned Judgement and order. As per the appellant no. 1, 2 & 4, they had put in 3 years service continuously whereas appellant no.3 has completed probationary period by end of June 1994 and, therefore, the Tribunal was justified in holding that they had attained the status of deemed permanent teachers within the meaning of Section 5(2) of the Act. They further submitted that even if the courses were not likely to restart in the academic year 1994-95, it was incumbent upon the management to declare the appellants as surplus and communicate their names to the Deputy Director of Education so that they would be continued on the rolls, paid their salaries and absorbed subsequently depending upon the vacancies in other schools. As per the Learned Counsel for the appellants, there was no prejudice caused to the petitioners if the appellants' names would be continued on the rolls as surplus teachers.

9. The Deputy Director of Vocational Education Training, Regional Office, Mumbai had issued a circular in the year 1991-92, thereby setting out the guidelines for the centrally sponsored plus 2 stage Vocational Education Scheme (VES) in the academic year 1991-92 onwards and as per the guideline no.6 it was stated that

in each class, students were upto 20 and in case there would be any difficulty in admitting 20 students, minimum strength should be 15 so that atleast 10 students would be available on the rolls at any point of time for starting courses. The advertisement released by the Petitioners on 14-5-1991 indicated the vacancies for the post of lecturers. The educational qualification prescribed was M.com IInd class for the post of instructor whereas for the post of lecturer, the qualification prescribed was Cost Accounting and Management/ Accounting and Auditing as a Special subject in atleast IInd Class and 3 years experience in teaching in a fresh. For the post of instructor in Creche & Pre-school Management, the prescribed qualification was BSc IInd class. In addition to the educational qualifications there was a further condition of minimum 3 years experience and none of the appellants satisfied this requirement. When 3 of the appellants were appointed in the first year i.e. 1991-92, their appointments were approved by the Dy. Director by relaxing the requirement of experience as a special case and only for that year. When all the appellants came to be appointed in the subsequent academic year 1992-93, the approval orders were again for only one academic year and in the year 1993-94 similar approval was granted. So far as appellant nos.1, 2 and 4 are

concerned, their appointment on probation was admittedly for the first time w.e.f 20-6-1992 and that of the appellant no. 3 was from 8-7-1992 as noted above.

10. The main question that is required to be considered in this petition is whether the appellants could be called as deemed permanent teachers within the meaning of Section 5(2) of the MEPS Act.

11. Section 5 of the Act reads as under:-

> (1) The management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy.
>
> (2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.
>
> (3) If in the opinion of the management, the work or behaviour of any probationer during the period of his probation, is not satisfactory, the

management may terminate his services at any time during the said period after giving him one month's notice (or salary of one month in lieu of notice).

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.

12. Sub-section 3 provides for termination of service while on probation on account of the work or behaviour of any probationer being unsatisfactory and the management is required to give one month's notice or salary of one month in lieu of notice. As per

sub-section 1 the management of a private school shall, as soon as possible fill in every permanent vacancy in the prescribed manner and by appointment of the person duly qualified to fill up such vacancy. Thus, the appointment to be made under Section 5(1) is necessarily against a permanent vacancy in a private school. In the instant case the petitioner started XIth standard in the year 1991-92 and on account of the natural growth i.e. students from XIth standard seeking admission to the XIIth standard, the XIIth standard was started in the next year 1992-93. In such a situation it cannot be said that in the first academic year itself i.e. in the year 1991-92 there were permanent posts available to be filled in by the petitioners under the VES. Consequently, the appointments of appellant nos.1,2 & 4 made in June 1991 cannot be said to have been made within the meaning of Section 5 of the MEPS Act and admittedly the appointment of all the appellants were made on probation for the first time in the academic year 1992-93.

13. All the appellants were issued notice dated 27-1-1994 informing them that in the academic year 1993-94 only the XIIth standard had adequate students and in the XIth standard strength of students was less than 10 and, therefore, the said class was not started.

Consequently, in the academic year 1994-95 there would be no admissions in the XIIth standard and hence the vocational courses started, would be closed down. When this notice was issued, none of the appellants had completed the probationary period of 2 years and, therefore, none of them had attained the status of deemed permanent teachers within the meaning of Section 5(2) of the Act. The School Tribunal had proceeded on the basis that the termination was effected or there was otherwise termination of service after completion of 2 years of probation period. This finding is grossly erroneous if we take into consideration the first date of appointment on probation i.e. in June/July 1992. The notice dated 27-1-1994 plainly informed the appellants that from the commencement of the academic year 1994-95 their service would not be required and this was informed by way of an advance notice to the appellants. It is nowhere brought on record by any of the appellants that in the academic year 1994-95 there were admissions either to the XIth or XIIth standard of the Vocational Courses started by the petitioners and that by discontinuing their appointment any other teachers were appointed in the said academic year. The Tribunal had recorded the factual finding that in the academic year 1994-95 there were no admissions either to the XIth standard or XIIth standard. However, the

Tribunal proceeded to hold that the appellants were retrenched and their retrenchment was illegal on account of the denial of absorption within the meaning of Rule 26(ii) of the MEPS Rules, 1981. In the affidavit filed on behalf of the State Government it has been rightly pointed out that the petitioners were not eligible for the protection under Rule 26(2) of the MEPS Rules, as such a benefit is available to the permanent or deemed permanent teachers.

14. What is important is the status of permanency even for the protection available under rule 26(2)(iii) of the MEPS Rules. Once it is held that none of the appellants had attained the status of permanency or deemed permanency on the commencement of the academic year 1994-95, none of them can be said to be permanent employees being retrenched and, therefore, rule 26 will not be applicable to any of them. The School Tribunal fell in manifest error in holding that the appellants were covered under the protection of Rule 26 of the MEPS Rules and were required to be continued as surplus teachers.

. When new courses are started by any school or the junior college and more particularly vocational guidance courses, it cannot be said that requirement of teachers

in the very first year of starting of such courses or classes would be on permanent basis. It would be necessary for the management to reassess the requirement of teaching/non teaching staff in the second year and in the instant case the petitioner management was successful in running XIth and XIIth standard simultaneously in the academic year 1992-93 and had, therefore, issued letters of appointment on probation for the first time.

15. In the premises these petitions succeed and the same are hereby allowed. The impugned common Judgement of the School Tribunal is hereby quashed and set aside and consequently, Appeal No. 8/1994 stands dismissed.

16. Rule is made absolute accordingly with no order as to costs.

[B.H.MARLAPALLE,J.]